

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TIMOTHY EARL AGEE,	)	
	)	
Petitioner,	)	8:08CV355
	)	
v.	)	
	)	
FRED BRITTEN,	)	ORDER
	)	
Respondent.	)	
_____	)	

This matter is before the Court on petitioner's motion for certificate of appealability (Filing No. [31](#)), motion for leave to appeal in forma pauperis (Filing No. [32](#)), and motion to appoint counsel (Filing No. [33](#)).

As set forth in [Federal Rule of Appellate Procedure 4](#) ("Rule 4"), a notice of appeal "must be filed with the district clerk within 30 days after the judgment or order appealed from is entered." This time limit is mandatory and jurisdictional, and failure to file a timely notice of appeal deprives an appellate court of jurisdiction. See, e.g., [Lowry v. McDonnell Douglas Corp.](#), 211 F.3d 457, 462-64 (8th Cir. 2000) (citations omitted).

Petitioner has not filed a notice of appeal, and this matter cannot proceed on appeal until he does so. Therefore, petitioner shall have until December 20, 2009, to file a notice of appeal. In the event that petitioner fails to file a notice of appeal, the Court will deny petitioner's pending motions without further notice. Accordingly,

IT IS ORDERED:

1. Petitioner shall have until December 20, 2009, to file a notice of appeal.

2. The clerk of the court is directed to set a pro se case management deadline in this case with the following text: December 20, 2009: check for filing of notice of appeal.

3. In the event that petitioner fails to file a notice of appeal, the Court will deny petitioner's pending motions without further notice.

DATED this 2nd day of December, 2009.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court